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THE APPELLATE DEPARTMENT OF
THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CRUZ

People of the State of California, Plaintiff/Respondent, **vs.** **Richard J. Quigley** Defendant/Appellant.	**Case #s:** **APPELLANT'S OPENING BRIEF ON APPEAL**

APPELLANT'S OPENING BRIEF ON APPEAL

Comes now the appellant, with his opening brief on the above-entitled case(s) and says:

NARRATIVE

This appeal is not being made with the expectation that the law will be applied to the circumstances of this case impartially, that the nature or cause of the action will ever be defined or addressed, nor with the expectation that this court will act honorably in its deliberations or decision. History has shown that, at least in matters involving the appellant and his ilk, the Santa Cruz County Courts, and the 6th Appellate

Court, are incapable of exercising authority derived from the Constitution of California, in a manner consistent with the respective Oaths and responsibility to uphold said constitution, with the will of the California Legislature as expressed in the various Codes, and/or with the honor their individual titles imply. (offer to prove)

The appellant comes, rather, with the expectation that here, over these otherwise trite allegations against the appellant, this court will add to the massive paper trail already available, one more decision founded on personality and politics, the Law be damned.

The appellant means no disrespect to the Court, nor to the precepts on which it is founded; although when viewed in their totality, the conduct of the courts, as documented in its history with the appellant, is such that total disdain is not only totally warranted, but long overdue.

Any ordinary man would have given it up by now. But too many people have died in establishing our form of government, and in its defense, for the appellant to cower in the face of the ongoing malfeasence of the police, prosecutors and courts in this matter. The appellant believes his duty to his God and his County demands that he spend every energy, and expend every other resource available to him, in seeking Justice in this matter by all lawful means – even if the appellant remains the only person involved who cares one whit about the Law.

BACKGROUND

For over a decade, the appellant has devoted much of his life to attempting to off-set the results of the fraud perpetrated by the author of California's helmet law (without compensation).

From the beginning, when the helmet law was made to apply to adults on the basis of a fraud perpetrated on the Legislature by its author, then Assemblyman Dick Floyd, the appellant has sought to find a

way to help the courts find and recognize the statute's inherent flaws. It became apparent from the beginning that Floyd's admitted lies[1] were of no import to either the Legislature or the Courts.

However, whether as a result of just bad Karma or inevitable circumstance, it was discovered early on that the statute had a major, insurmountable flaw – its author had no way to provide a means of enforcing the statute that did not violate a citizen's right to notice of just what constitutes a "motorcycle safety helmet" in certain enough terms to support a criminal prosecution of anyone alleged of violating it, except and unless the California Courts ignored evidence of the defect in the statute (which, incidently, they have thus far).

The first court that attended (and avoided) the issue of vagueness of the statute was the 4th Appellate Court of California in a case entitled *Buhl v. Hannigan*.[2] As will be discussed later in this brief, the *Buhl* court concluded that the statute was not unconstitutional, as written, because it was clear from the way it was written, that it would never be enforced in the manner applied to the appellant here. As much as the courts have not subsequently liked dealing with the *Buhl* ruling elsewhere, the *Buhl* court found that the proposition that the police or consumer would or could be held responsible for determining if a helmet was properly fabricated, was, in a word, "absurd."

In fact, the very next appellate court to deal with the issue of whether or not the statute was constitutional as enforced was the 4th

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1. When asked to verify the source of his "public burden theory" and the statistics he cited in professing it, Floyd repled: "Who gives a fuck! I don't care what the figures are." Appellants reaction was immediate. No statute, so obtained, has any place on the books in California.

2. Actually, the first court to deal with the issue and elements of the vagueness of the helmet law, as enforced, was the Butte County Superior Court. The opinion of the court is included in the file – People v. Woods – along with some other examples of courts that dealt with the issues of constitutionality, impartially. Also included for the court's consideration was Washington v. Maxwell, State of Georgia v. Greg D. Alspach, People v. Brown (an abomonation), and more.

Appellate Court, this time in San Diego, in the case of *Bianco v. C.H.P.* As explained to the trial court, the appellate was intimately involved in the preparation of the briefs in *Bianco*, and was even present at oral arguments leading to the decision (up to and including helping the appellant, Bianco, prepare the motion for consideration which led to the *Bianco* court's modified opinion, which is now the state of the law). This case, and it's implications, will also be discussed later in this brief.

And finally (although the prosecution and trial court found their opinion irrelevant to the circumstances of the appellant's case), the appellant had a hand in helping prepare the Points and Authorities in support of a Motion for Summary Judgment for the United States District Court, which resulted in an injunction against the California Highway Patrol regarding their enforcement policies relative to CVC 27803(b). Again, the elements of that injunction, and how the decision applies to the appellant, will be discussed later in this brief.

The point of this background is to allow this court to understand that the appellant's experience with this statute is not trite or incomplete, and to serve as notice that the appellant has legitimate grounds for his challenge of the statute "as applied" to him, regardless of the trial court's efforts to reduce that challenge to one of challenging the statute merely "as written."

ISSUES ON APPEAL

For purposes of this appeal, the appellant incorporates all documents presented to and/or filed with the court during the dozens of appearances leading up to the decision in this case, including but not limited to his Demur to Complaint, a 1538.5 motion and supporting Points and Authorities, all Judicial Notices and other documents drafted by the appellant, the responses by the prosecution (numbering 2), and all other

documents presented to the court in support of the appellant's case for the trial which never happened, plus the proposed statement on appeal as the official record of the testimony of all persons involved – all certified by the court as the official record of what transpired – and the court's many written opinions and ultimate *AMENDED* SUPPLEMENTAL WRITTEN OPINION (hereinafter "ASWO"), filed on November 1, 2001.

In addition, in this opening brief, the appellant will direct the courts attention to the content of the final judgment of the court, filed on November 1, 2001, and of the "facts" alleged therein in support of said judgment. Appellant DOES NOT waive his objections raised during the course of the various proceedings, nor does appellant concede that the court has responded to many of the objections, demurs or motions made by the appellant during the course of this case. Appellant, rather, is attempting to reduce the volume of information to a level where the appellant panel can grasp what has transpired without having to spend the over two years it took for it all to occur.

It is an impossible task to cover in detail in this opening brief, all the errors that have been made in this case. So, appellant has chosen to incorporate his written briefs contained in the file into this appeal by reference, and will elude to the other documentation contained in the certified record as necessary throughout this pleading.

THE *AMENDED* SUPPLEMENTAL WRITTEN OPINION

At line 20, page 1, of the ASWO, the court wrote:

"The Court finds Defendant QUIGLEY guilty beyond a reasonable doubt based on the testimony heard, evidence submitted and the controlling legal authorities."

It is, of course, the point of this appeal to confirm whether or not the "testimony heard, evidence submitted and controlling legal authori-

ties" support a finding of guilty. It is also without question that the appellant believes that no such finding can be upheld based on the testimony, evidence or controlling authorities actually present in the case file, or present in the relevant statutes and controlling authorities.

At line 20, page 1, of the ASWO, the court wrote:

"Defendant QUIGLEY has raised a number of legal arguments which the Court considers motions to dismiss, or in the alternative to allow corrective action on the citations given."

Appellant's Demur, filed in November of 1999, was not a motion to dismiss. Appellant challenged the court's jurisdiction, or lack thereof, on the grounds outlined in the Demur to Complaint and stands by his arguments cover to cover. The fact that the court proceeded against the appellant following the "hearing" of such demur, is best evidence that many of the arguments contained therein were overruled without ever being addressed. In particular, it was never explained why it is not required that the citations, adopted by the court as verified complaints, were not required to conform with the provisions of PC §§950 and 952 as required in Penal Code §1004. (See Demur to Complaint)

At line 22, page 1, of the ASWO, the court addressed the first issue it dealt with directly by posing the question "Are the citations correctable?" and answering at line 23: "The Court finds the citations are not correctable."

The problem for the court is that there is no foundation for its finding.

The court concedes, starting at line 28, page 1, ASWO "Section 40303.5 provides that a fix it ticket *shall* be issued 'unless the arresting officer finds that any of the disqualifying conditions specified in subdivision (b) of section 40610 exist. These disqualifying conditions in-

clude '(2) the violation presents an immediate safety hazard'; and '(3) The violator does not agree to or cannot promptly correct the violation.'" (*emphasis* added)

But then goes on to say, "As both of these disqualifying conditions were present here, the provisions of Section 40303.5 requiring the issuance of a fix it ticket are inapplicable." Based on what?!?

There are several elements of this portion of the decision that fail, starting with the fact that the prosecutor specifically stated that the appellant was not being charged with a violation of CVC 40610. To apply one of the disqualifying conditions of 40610 without ever raising them by allegation against the appellant, constitutes conviction upon allegation, and the sentence becomes that the fix-it-ticket nature of the statute is automatically converted to an infraction citation, which the court itself states is not the case when it wrote "the provisions of Section 40303.5 requiring the issuance of a fix it ticket are inapplicable." Although the court states that the provisions are inapplicable to the appellant, it admits in the same paragraph that the statute *does* require the issuance of a fix it ticket (as opposed to an infraction citation).

Further, as the court noted, according to the statute, it is "the arresting officer" who is to find if any of the disqualifying conditions exist, not the court. The statute doesn't give authority to the court, or anyone else, to make the decision. Only the arresting officer.

If any of the officers had charged the appellant with violating one of the disqualifying conditions of 40610, there is no question that the court would be proper in rendering judgment as to such an allegation. But to both make the allegation, with no evidence save personal opinion, and rule on it to the detriment of the appellant, must surely violate some aspect of due process.

And speaking of evidence, the Engrossed Statement on Appeal (marked "Proposed Statement on Appeal" and later certified without objection or amendment) contains testimony of the various citing officers. Nowhere in the testimony of any of the officers do any of them mention any of the disqualifying conditions contained in CVC 40610(b). As close as it gets is when the appellant managed to ask (over the "relevance" objection of the prosecutor) the question of CHP Officer Ulrich, his testimony was that "he based his decision not to make the citation not correctable on the assumption that the defendant knew he was not in compliance with the helmet law, stating his belief that correctable violations only apply to those offenses where a person did not know they were in violation." (Record of Officer Ulrich's testimony) – which is clearly not one of the disqualifying conditions contained on CVC 40610(b).

Other than officer Ulrich's testimony, there was absolutely no testimony as to any disqualifying condition in existence at the time the citations were issued. The court either erred by admitting facts not in evidence, testified itself as to the circumstances surrounding the issuance of the citations, or otherwise just made up the finding when it ruled, "As both of these disqualifying conditions were present here, the provisions of Section 40303.5 requiring the issuance of a fix it ticket are inapplicable."

Moreover, the first witness called, Deputy Thurber, testified under cross-examination that he had marked the citation non-correctable in "error."

Defendant: "And on what basis did you determine that it was not a correctable violation?"

Thurber: "That appears to be an error on my part.

Instead of striking the 'yes' I hit
the 'no' box."

Defendant: "So it's your opinion today that this
is a correctable violation?"

Thurber: "Well it appears to be a correctable violation.
(Record of Deputy Therber's testimony.)

Based on Thurber's testimony, the appellant attempted to have the complaint corrected to fit the testimony of the officer, but the prosecution objected on the basis of his personal feelings about it, and the court denied the change, resulting in one of the six convictions against the appellant – even in spite of the officer's admission to the error, and even though the appellant had provided the court with copies of two other citations issued by Thurber (within two days of the first), marked correctable and signed off by a CHP Lieutenant a year before. (At this point it started to become clear to the appellant that the fix was in, but it didn't have anything to do with the nature of the violation.)

The next question, appearing at line 6, page 2, of the ASWO, the court answered for itself, was "Is the statute constitutional?"

In sum, the court spent the next two pages winding through the most unfounded, convoluted interpretation of the appellant's claims, the statutes, and the rulings of the higher courts, imaginable.

On line 7, page 2, of the ASWO, the court conceded that the appellant had challenged the constitutionality of the statute "as applied" adding "and as written." By line 12, page 2, of the ASWO, the court set aside the appellant's whole case of unconstitutional enforcement of the statute as applied to him by writing "Thus, defendant's challenge appears in actuality to be a challenge to the language used in the statute, i.e. a challenge to the statute as written."

The court continued: "This Court's decision is based on precedent from higher courts. The *Buhl* case specifically held that the statute was not impermissibly vague, holding that standards of the type used in this state are no impermissibly vague, provided that their meaning 'can be objectively ascertained by reference to common experiences of mankind.'"

This was the whole problem for the appellant. This discussion and interpretation was independent from anything presented by the prosecutor . . . a fiction created by the trial court to support it's upcoming contentions.

The *Buhl* court made the reference the trial court cited in a discussion of the contention that the language having to do with the *fit* of a helmet described in CVC §27803(e):

> "For the purposes of this section, 'wear a safety helmet' or 'wearing a safety helmet' means having a safety helmet meeting the requirements of Section 27802 on the person's head that is fastened with the helmet straps and that is of a size that fits the wearing person's head securely without excessive lateral or vertical movement."

Buhl's "common experiences" reference had absolutely NOTHING TO DO with determining whether the definition of a "helmet" was satisfactory to satisfy the requirements of notice – it had already done that in the previous paragraph of its opinion. The court simply mis-cited the case by mis-applying the cited portion.

The appellant even attempted to help the trial court understand the *Buhl* decision by providing a copy of the appellant's pleadings in *Buhl* (in the file) so that the court could understand the reasoning of the *Buhl* court in reaching the determination that it did relative to constitutionality of the statute; but for what? The appellant contends that the trial court made as little use of that document as it did all the rest. (Prejudice sees what it wants, and cannot see what is plain.)

Having redefined the appellant's constitutional challenge to just one of the two elements required to show vagueness (eliminating defendant's evidence of the problems with enforcement), and after completely perverting the *Buhl* decision, at line 18, page 2, of the ASWO, the court continued: "Defendant is arguing that the statute is vague as to what constitutes a helmet. Specifically the defendant argues that whether a baseball cap does or does not constitute a helmet is something that can not be objectively ascertained 'by reference to common experiences of mankind.'"

There it is!

The court either did not read, or did not understand, the information that was provided to it. The points and authorities filed in support of the appellant's 1538.5 motion was taken directly from the Points and Authorities filed against the CHP is *Easyriders v. Hannigan*. The Federal Court had little problem understanding the nature of the problem, and issuing an injunction to prevent its effects.[3]

What the appellant attempted to establish at the hearing where the officer's testimony was taken, against overwhelming resistance by a judge who firmly established his belief that the standard for what constitutes a helmet is "common sense", was that the statute is based on technical standards that cannot be understood by persons of normal intelligence; that as such, and as stated in *Buhl*, the proposition that the statute would require the application of the "common sense" of either the consumer or enforcement officer to determine if a helmet was properly fabricated, was equally "absurd" as was any other subjective basis for such a determination.

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[3]. It is interesting to note that in its 75-year history, the *Easyriders* injunction was the only injunction of an enforcment policy ever issued against the California Highway Patrol. (offer to prove)

The court continued: "The testimony of the officers was clear and consistent that a baseball cap did not constitute a helmet." (Line 20-21, page 2, ASWO.)

None of the officers were qualified to testify as to whether what the appellant was wearing was a baseball cap, much less a helmet.[4] Nor did they. What they testified to was that the appellant's headgear had the *appearance* of a baseball cap, and did not *look like* a helmet.[5]

Starting at line 22, page 2, of the ASWO, the court wrote: "*Buhl* held that consumer and law enforcement officer were not required to determine whether a helmet complies with federal safety standards; rather, the law only requires that a motorcyclist wear a helmet bearing a certification of compliance with the standards."[6]

Reading that one sentence, it would appear that the trial court actually understood the *Buhl* decision, were it not for the very next sentence, starting on page 2, line 24, where the court takes a bizarre turn – an epistemology more twisted than a Mobius strip – stating: "Under *Buhl*, the Court is expressly allowed to rely on common objective experiences to determine what constitutes a helmet."

The *Buhl* court IN NO WAY expressly allowed the court, or anyone else, to rely on common objective experiences. In fact, the appellant contends, with confidence, that there is no such thing in law as "common objective experiences." Talk about just making stuff up?!?

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4. Because ultimately the definition of a helmet is based on an engineering test standard, appellant attempted to challenge the witness (Thurber) pursuant to the Kelly-Frye doctrine, which the court found irrelevant. (Proposed Statement on Appeal, certified as the Engrossed Statement on Appeal, page 2.)

5. Nowhere is it written, or even asserted (except here), that a motorcycle safety helmet cannot *appear* identical to a baseball cap. Nowhere . . . not to mention that the officers did not testify that the appellant was wearing any other baseball equipment, or that he was near a baseball field, or that he was carrying bats or balls. What makes a baseball cap and baseball cap as a matter of law? That fact that some police officer says so? . . . and some judge agrees? And once that happens, something that looks like a baseball cap, cannot then be a helmet? By what authority?

6. What "standards"? The *Buhl* court was referring to the standards required to be adopted in CVC §27802, which just happens to be FMVSS218. But it is clear that the trial judge missed that particular fact.

Then at line 26, page 2, of the ASWO: "Presumably the arresting officer is also entitled to do so (rely on "common objective standards"). The testimony of the officers was clear that a baseball cap did not constitute a helmet under any standard of objective experience."

Well that caps it (no pun intended)! Ever since this decision was written and filed, the appellant has searched high and low for a single example of a "standard of objective experience," and there is no such concept ever been brought up anywhere except in this decision. The appellant cannot even wrap himself around the notion, even though it serves as foundational to the ultimate decision of the trial court and the appellant's ability to ascertain what has happened to him.

(NOTE: With great respect, although the appellant had viewed Judge Danner's role as more of a de-facto prosecutor in this case throughout the dozens of proceedings, rather than triar-of-fact; it is, in writing this brief, never been more obvious. If any of these notions had been put forward in a brief by the prosecutor during the course of the prosecution of these allegations, the appellant would have addressed them then. Having to do this on appeal is the best evidence yet that the court was confused about its role throughout these proceedings, and that the appellant's rights to an impartial hearing of this case were denied from the onset.)

The court's explanation of the *Bianco v. California Highway Patrol* decision makes no sense in the context of its ruling.

The court wrote at line 28, page 2, of the ASWO: "In *Bianco v. California Highway Patrol* (1994 Cal. App 4th 1113), the court modified this ruling somewhat . . ." Modified what ruling?

If the trial court's opinion had stopped three sentences earlier, this reference would make sense; because the *Bianco* court did struggle to modify the *Buhl* court's ruling, specifically the portion that said that the

only requirement of the helmet law was that the motorcyclist wear a helmet bearing a certification of compliance with the Federal standards. The appellant worked on the *Bianco* case. The appellant knows with absolute certainty that the *Bianco* court never even approached the subject of an "objective experience" standard, which is the reference that immediately preceded the trial court's interpretation of the *Bianco* court's opinion.

Other than that, the appellant concurs with the trial court's telling of the *Bianco* court's ruling, taking care to point out that the *Bianco* decision is an amended decision, and to point out that the amicus letter[7] that was written to the *Bianco* court in bringing about that amended opinion, is part of the information that was put in front of this trial court, and part of the record on this appeal. And that the letter from Bennis, to the *Bianco* court, more than clarifies what the *Buhl* court found, relative to what standard applies to determining what constitutes a "helmet" under California law.

Starting at line 5, page 3, of the ASWO, the court almost accurately reflects the position of the appellant, and said: "Defendant relies on language from *Buhl* that 'the proposition that the statute would require the consumer or enforcement officer to determine if a helmet is properly fabricated ... is absurd,' to argue that no evidence as to the fabrication of his 'helmet'/baseball cap should have been admissible, and that he could not be required to determine if his baseball cap met the applicable standards."

No, that's NOT what the appellant argued.

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7. A San Diego Attorney (Bennis) wrote to the *Bianco* court (in the file, filed 08-31-01, and starts with "I believe the court has misinterpreted the reasoning...") when he saw the decision in the daily record. Bennis was a research attorney for Supreme Court Justice Mosk for years, and is currently one of the most respected appeals attorneys in the State of California. Bianco, the appellant, incorporated Bennis' letter into a Motion for Reconsideration which resulted in the modified opinion referred to here. What was filed with the court was the "text" of the Bennis letter . . . the original was lost in a computer crash some years ago.

The appellate contended then, and now, that the *Buhl* court found that the proposition that a case such as the one at bar would get this far, "absurd." More importantly, the appellant contended then, and now, that no *OBJECTIVE* evidence (much less "common objective experience" or "common sense") has any place in a criminal prosecution – particularly with the issues at bar here.

At page 3, starting at line 9, of the ASWO, the court continued: "Despite defendant's creative arguments, the Court relies on common sense, as authorized in *Buhl*, in inferring that both defendant and the arresting officer were aware that his baseball cap was not a 'helmet,' that defendant had actual knowledge that despite the DOT symbol (if present), his cap did not meet compliance with federal safety standards, and that therefore defendant did not meet the requirements set forth (…) under either *Buhl* or *Bianco*."

This is the only acknowledgement by the trial court of any standard more decernable than "common objective experience." And, of course, his reference to a requirement that the helmet law is that a motorcyclist should wear a helmet meeting such standards is also a first.

Coincidentally, the ineffectiveness of the federal standard is why the appellant provided the court with a list of helmets – according to NHTSA , all the helmets that could be easily found in the market place – which demonstrated that two out of three helmets purchased and tested by NHTSA, "FAILED"; explaining that that meant that the possibility of finding a helmet that actually can comply with such Federal standards, is less than one out of three, even for the most committed consumer.

At page 3, line 14, Judge Danner brought up *Easyriders v. Hannigan* (1996-9th Circuit) 92 F. 3d 1486, pointing to the only flaw in that opinion – an opinion which sustained, by the way, the Federal In-

junction issued against the enforcement policies of the C. H. P. for enforcement practices none different than the ones here. The trial court ran, not walked, at line 16 to the portion of the opinion which was based on a false premise: "The Court states that an officer may have a 'reasonable suspicion, based on reasonable inferences drawn from the helmet's appearance' that the motorcyclist was violating the law."

The flaw in this reasoning occurred just a paragraph before the portion cited by the trial court, where the *Easyriders* court wrote: "(T)here are some helmets that are DOT approved that are similar in appearance to non-complying helmets."

Based on the theory that there are helmets that are "DOT approved," it is easy to draw the conclusion referenced by the trial court. But when you take into account that the appellant submitted more than just a little evidence to reveal that there is no such think as a "DOT approved" anything, it seems ridiculous for the court to draw on the last half of that reasoning – not to mention that the *Easyriders* was using the example to allow the traffic stop, NOT the issuance of a citation, so the cite was being mis-applied in any case.

The other portion of the *Easyriders* case that the appellant insisted in getting into the record (even to the point of attempting the prosecutor to stipulate to it) is the portion that reads: "The helmet law, as interpreted by the California courts and correctly articulated by the district court, requires specific intent as one of its elements." The statement is neither ambiguous or limited by qualifiers. It stands as the foundation of the District Court's injunction.

The appellant provided that finding to the trial court, and brought it up time and again in relation to trying to grasp how he was supposed to address the evidence – in a specific intent or strict liability scheme –

while defending himself. The court steadfastly refused to acknowledge the finding of the 9th Circuit Court of Appeals relative to the "specific intent" element, and the prosecutor insisted that the Federal Courts had no jurisdiction over state courts on such matters anyway. It's in the trial transcript.

By way of shunning the opinion of the *Easyrider* court, the prosecutor went to far as to present the following cases in support of his contentions that a Ninth Circuit opinion had no standing as to the issues of this case:

> While the Decisions of lower federal court may be persuasive, California courts are not bound to follow them on constitutional issues. (People v. Perez (1991) 229 Cal.Ap.3d 302, 209; People v. Crawford (1990) 224 Cal.App.3d 1, 8; People v. Superior Court (Dodson) (1983) 148 Cal App.3d 990, 996.) "[A]lthough we are bound by decisions of the United States Supreme Court interpreting the federal Constitution [citations], we are not bound by the decisions of the lower federal courts even on federal qestions." (People v. Bradley (1969(1 Cal.3d 80, 86; similarly see People v. Burton (1989) 48 Cal.3d 843, 854, fn.2.) When there is conflict among the federal circuits, decisions from the Ninth Circuit, which includes California, as entitled to no more weight than decisions from any other federal circuit. (Elliott v Albright (1989) 209 Cal.App.3d 1028, 1034.)

In a further display of ill-regard for the opinions of the Ninth Circuit, arguing against the applicability of the "specific intent" reference in *Easyriders*, the prosecutor emphasized his disdain thus:

"The defendant again addressed the issue of the nature of the charge(s) – general or specific intent, citing *Easyriders*. The prosecution stated 'Federal cases are never binding on the California court, never. They can be persuasive, but they're never binding.' The prosecution said that the authority was from some 1969 case, but did not know what the name of the case might be. The court concurred. Defendant stated that he believed the 9th would find it interesting to know that in Santa

Cruz, not only were opinions from the 9th not to be respected, but should otherwise be disregarded. The prosecution said, 'I think with all the cases the Supreme Court takes up, they know that.'" (Proposed Statement on Appeal, certified as the Engrossed Settled Statement on Appeal without amendment or change.)

So, from the mouths of babes, it flows.

Bottom line, when the trial court finally decided to recognize the *Easyriders* case, it did so on a false premise (the portion cited had to do with okaying the stop, not the citation) built on flawed reasoning (the mistaken belief in a "DOT approved" helmet).

Then the court then made a leap worthy of Spiderman:

"Here, defendant was cited six times for wearing his baseball cap. Even if defendant's argument were to be accepted, certainly the second, third, forth, fifth and sixth citations were supported by actual knowledge of noncompliance." (Page 3, starting at line 23, of ASWO.)

Wow! Notice by citation. Now there's a legal concept.

Six citations were brought to the point of decision, out of the 11 to which the appellant initially pled; and those 6 serve as notice of wrong-doing? Even now?

What about the other 17 citations issued here in Santa Cruz County, not to mention the one the appellant informed the court about that was issued and dismissed on proof of correction in San Benito County? And what about the fact that the appellant has ridden for over a year and a half with nothing more than he was wearing at the time the previous citations were issued, without a single traffic stop, or even a second glance? (When does latches set in?)

What if the appellant is correct, and his interpretation of *Easyriders* correct, and his constitutional rights were violated by each

and every police officer that issued him a citation for wearing something other than what they approved of? How would that work as notice? As of the date of the issuance of the trial court's ruling, there was no reason whatever for the appellant to believe anything except that he had been falsely accused – save for the "common objective standard" made up after the fact by the court to justify a finding of guilty.

And finally the court called on three previous "convictions" at page 3, line 25, to add to the tome of support it had for claiming the appellant had notice – when, in truth, the only thing the appellant has actual knowledge of is of the level of corruption of the Santa Cruz courts.

Once again, here, the appellant is handicapped by the fact that these 6 cases were never joined, and by the number and magnitude of the errors committed. There is simply no room here to line out every brick in the wall that the prosecutor and the court built between the appellant and the appellant's right to due process, and certainly not enough room to take on the issue of the constitutionality of the statute as it was applied to him here. The defects in the statute pale in comparison to the other offenses put on the appellant by this prosecution.

But one last thing, on the day when the appellant was to be given his day in court, on the day the appellant was supposed to have a trial, it is a matter of certified record that so such trial ever transpired. And, it is also true that an act of prosecutorial misconduct took place on that day, and at that time, over and above all other similar occurrences, which warranted then, and now, a mistrial; to wit:

"Perhaps the most devastating conduct by the prosecutor, supported by the court, was the prosecution's coaching excluded witnesses as to what had transpired while they had been excluded, and suggesting responses to questions the appellant had asked the previous witnesses.

Although the defendant complained of the conduct, because of the general instruction against the defendant entering any more objections, the defendant was not free to move for a mistrial – although the court did say it would deal with the defendant's complaint about the conduct at a later time." (Proposed Statement on Appeal, certified as the Engrossed Settled Statement on Appeal, page 6)

The court explained how it did not have time to conduct a trial at that time, and explained the schedule it thought might be appropriate.

The record continued:

"Ulrich was sworn and took the stand.

DIRECT:

Officer Ulrich testified that he had seen the defendant riding a motorcycle while wearing an object that looked like a baseball cap, so he stopped the defendant and cited him for not wearing a helmet while riding a motorcycle.

CROSS:

Defendant: 'During the break that we just took a few minutes ago, did you have a conversation with the district attorney?'

Ulrich: 'Yes I did.'

Defendant: 'Could you briefly fill me in on what the conversation was about?'

Ulrich: 'He talked about what the other officers had testified to.'

Defendant: 'Are you talking about questions or questions and answers, officer?'

Ulrich: 'Both.'" (Testimony of Ulrich.)

Appellant objected and complained of the conduct. The court said it would take the matter up at some later time, and that it was only important to get the testimony of the witnesses and go home – notwithstanding the fact that the balance of the witnesses had been tainted by the prosecutor's misconduct.

After that day, the appellant quit attending hearings on the matter until the day the court rendered it's decision – there is a point where continued participation becomes a mark on the reputation of the offended party, not to mention an incomprehensible strain.

On that day, the day the trial court made its oral finding of "guilty," the appellant sat in the gallery and did not participate. There was no point. Any opportunity for an impartial trial was long since gone, and there was really nothing left for the appellant to do but complain – and the court had had, and ignored, quite enough of that.

ADDITIONAL GROUNDS FOR APPEAL

The case went on for over two years from the day of first call to the day of decision. There is no standard for due process that would accommodate such a schedule. Much of that imposition in time was put on the defendant by the prosecutor's failure to appear when the case was scheduled.[8]

The way this whole case was handled is an abomination.

There will be no harm in overturning this conviction.

The questions that underpin the case remain unsettled and unanswered, and the appellant will surely be back to address them again . . . and again, if necessary, to get a decision based on the law and an impartial judgment of the facts.

8. It took over four appearances, and three months, to finally get the court to certify the record, mostly due to the refusal of the prosecution to participate in the proceedings. There is no transcript of those proceedings at this time, but the court reporter did apparently make a record. If necessary, the record of the efforts of the appellant to obtain a certified record, against the foot-dragging non-participation of the prosecution, will be made available. (There's some stuff in there that's also not to be believed.)

The appellant herein incorporates the Proposed Statement on Appeal into this brief, including the testimony of the various officer, and makes two additional points: 1. Not one officer could explain what makes a “helmet” a “helmet”, and 2. Not one officer evidenced, by word or deed, that he had been given adequate training with respect to enforcing the statute. The appellant has met his burden in establishing that the statute is unconstitutional as enforced. The appellant has proven, beyond any reasonable doubt, that neither the consumer nor law enforcement officers, have any idea how to objectively establish when someone is in compliance with CVC §27803.

CONCLUSION

Based on the foregoing, it is clear that for whatever reason, the appellant stands convicted on 6 counts of violating CVC §27803(b) as the result of a series of violations of his constitutional rights – starting with the issuance of the citations without the requisite probable cause, up to and through being abused by a process of adjudication that is unprecidented in the history of the California courts, even in Santa Cruz County. Moreover, the spirit of cooperation between the prosecutor and the court was, and remains, more than merely suspect.

The prosecutor and the trial court joined forces in perverting the law, and distorting the system, to the ends of convicting the appellant at all costs – their respective duties and responsibilities, and the Law, notwithstanding.

Against such a pernicious abuse of process, or even the appearance thereof, this court must resolutely stand. It's time to do your job. Submitted, June 3, 2002, by,

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Richard J. Quigley, appellant, pro se